JAMES R. BROWNING

No. 955

In the Supreme Court of the United States

OCTOBER TERM, 1958

MIDWESTERN INSTRUMENTS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D.C.

JEROME D. FENTON,
General Counsel,
THOMAS J. McDERMOTT,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
CHRISTOPHER J. HOEY,
Attorney,
National Labor Relations Board, Washington 25, D.C.

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OPINIONS BELOW

The opinion of the court below (Pet. 21a–25a) is reported at 264 F. 2d 829. The National Labor Relations Board's findings of fact, conclusions of law, and order (Pet. 1a–20a) are reported at 119 NLRB 1690.

JURISDICTION

The judgment of the court below was entered on March 6, 1959, and petition for rehearing was denied on April 9, 1959. The petition for a writ of certiorari was filed on May 28, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED

Whether the court below was correct in its determination that there was substantial evidence on the record as a whole to support the Board's finding that petitioner violated Sections 8(a) (1) and (3) of the National Labor Relations Act by discharging one employee for his union adherence and interrogating others concerning their union activities.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are set forth *infra*, pp. 8–9.

STATEMENT

A. The Board's findings and conclusions

The Board found that the petitioner violated Section 8(a) (1) and (3) of the Act by interrogating employees regarding the union leadership and activities of fellow employees and by discharging B. C. Neuman because of his union leadership. The facts upon which this finding is based are set forth below.

Early in March, 1957, B. C. Neuman, an employee of the petitioner, sought out the business manager of International Brotherhood of Electrical Workers, Local Union No. 584, AFL–CIO, and arranged with him to call a union meeting for March 8 (R. 10; 43–44).[1] This meeting was attended by Neuman and seven of his co-workers, all of whom signed union authorization cards that night (R. 10; 44). On the

[1] References to portions of the printed record are designated "R." References preceding a semicolon are to the Board's findings; succeeding references are to the supporting evidence.

following day, Neuman persuaded 16 other employees to sign cards and during the following week enlisted several more members (R. 10–11; 45). A second union meeting was held on March 18 (R. 11; 45–46).

During this organizational period, Charles Cart, a leadman—but not a supervisor—suggested to Production Superintendent Piester that in the event of a layoff the petitioner could rid itself of union adherents by including the leaders in any reduction in force. Piester rejected this proposal on the ground that it would involve the petitioner in serious difficulties (R. 12; 69–70). He asked Cart, however, whether, as suggested by his layoff proposal, he knew who the union leaders were and Cart replied that he did not. Piester then described an employee whom a neighbor had told him was the union leader. The description, according to Cart, fitted Neuman (R. 12; 70).

On March 19, the union's business manager telephoned M. E. Morrow, chairman of the petitioner's board of directors, and informed the latter of the union's organizational campaign. Morrow told him it would do him "no good to organize" for he "would never get a union in that plant" (R. 12; 116).

On the morning of March 20, just before the work shift began, Neuman engaged employee Petra Navarro in a short conversation about the Union (R. 12; 33). When Neuman left, Supervisor Lowe approached Miss Navarro and asked her whether Neuman had discussed the Union and, in particular, whether he had "tried to get [her] into the union" (R. 12; 34).

On the following morning Neuman was discharged under the following circumstances. It was Neuman's job as a wireman to make oscillograph harnesses, the assembly of which takes from two to three days (R. 13; 46, 48, 71, 85). Upon the completion of a harness, it is shop practice for the wiremen to take the harness to a harness tester at a nearby bench and wait there while the harness is being tested, a process which usually takes only 5 or 10 minutes (R. 13–14; 54–55, 84–86, 119–122). No supervisor had ever complained about this practice of the wiremen (R. 14; 85).[2] If any defect is found, the harness is returned to the wireman who assembled it for correction (R. 14; 47). On the morning in question, Neuman completed a harness and took it to harness tester Wood. Neuman watched the testing and talked to Wood for a period of 10 to 15 minutes while the latter was making the tests (R. 14; 48, 83–84).

While Neuman was waiting for the completion of the tests, the petitioner's president, G. R. Morrow, entered the large room which housed the assembly shop and coil winding department and paused to talk to Foreman Lowe (R. 14; 34, 48, 73, 83). During this conversation, Lowe pointed across the room toward Neuman and told President Morrow, "There is the boy that caused the whole deal" (R. 16; 34, 37). A few minutes later President Morrow went

[2] Although, as harness tester Wood testified, it was not necessary that the wiremen assist him while he was checking a harness, they occasionally "would pick up a screw driver and help [him] hook it up" (R. 81, 86). And Wiremen Barber, Wood and Neuman testified that they sometimes assisted Wood in the checking (R. 120, 122, 47).

to the office of Superintendent Piester and ordered that Neuman be discharged (R. 13, 14–15; 88, 103, 109). In the meantime Neuman, having ascertained that the harness which he had just completed was in working order, started back to his bench to begin another job (R. 13; 48). At that moment Foreman David approached him and announced, "you are slowing up production and that is a good enough reason to let you go" (R. 13; 48). Neuman asked if that meant he was being fired and the foreman answered in the affirmative. Neuman thereupon left the plant (R. 13; 48).

Later the same day, the Union's business agent, Shaull, telephoned M. E. Morrow, chairman of the petitioner's board of directors, to protest Neuman's discharge. During a heated exchange between Shaull and Morrow, the latter declared that he would "fire any —— — — ——— he wanted to * * * that no ——— union was ever going to organize that plant. * * * [t]hey had tried it before and didn't have any success" and that "he would come out and clean out the whole union * * *" (R. 13, 116–117).

On the basis of the foregoing facts and the entire record, the Board concluded that the petitioner discharged Neuman because of his union activities, in violation of Section 8(a) (3) and (1) of the Act, rather than for loafing as claimed by the petitioner (R. 18). It further found that the petitioner violated Section 8(a)(1) of the Act by the conduct of Superintendent Piester in questioning employee Cart regarding the identity of the union leader in the plant, and by the conduct of Foreman Lowe in questioning

Miss Navarro as to whether Neuman had sought to persuade her to join the Union (R. 18).

B. The Board's order

The Board's order requires petitioner to cease and desist from engaging in the several unfair labor practices found and from in any other manner interfering with, restraining or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act; to offer Neuman immediate and full reinstatement to his former or substantially equivalent position, with back pay; and to post appropriate notices of compliance (R. 28–29).

C. The decision of the court below

The court below affirmed the Board's findings as adequately supported by the record and enforced its order (Pet. 21a–25a).

ARGUMENT

It is plain on the face of the petition (pp. 3–7, 9) that the petitioner's basic quarrel with the court below is that it refused to weigh the evidence and resolve *de novo* the conflict in testimony concerning Neuman's discharge. No such duty rests upon a court reviewing Board orders and the judgment below that the Board's findings with respect to Neuman's discharge are supported by substantial evidence on the record as a whole presents no question warranting review by this Court. The further ruling of the court (Pet. 25a) that petitioner's interrogation of employees concerning union matters "could well intend to influence the employees and interfere with the free exercise of their

organizational rights" likewise presents a factual issue which this Court does not normally undertake to review. The different results in the cases cited by the petitioner (Pet. 11) as in conflict with this ruling are attributable, not to difference in principle, but rather to the circumstances and the particular facts of those cases.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

JEROME D. FENTON,
General Counsel,
THOMAS J. MCDERMOTT,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
CHRISTOPHER J. HOEY,
Attorney,
National Labor Relations Board.

JUNE 1959.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are as follows:

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

UNFAIR LABOR PRACTICES

Sec. 8(a). It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10 * * * (e) The Board shall have power to petition any United States court of appeals

(including the United States Court of Appeals for the District of Columbia), or if all the United States courts of appeals to which application may be made are in vacation, any district court of the United States (including the United States District Court for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. * * * The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

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